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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ALPS PROPERTY & CASUALTY
10 INSURANCE COMPANY, a foreign insurer

11 Plaintiff,

12 vs.

13 TIMOTHY BILICK, an individual;
14 TBILLICK LAW PLLC, a Washington
Professional Limited Liability Company; and
BANK OF ENGLAND, a foreign bank
corporation

15 Defendants.

8 No. 2:21-cv-00916

16
17 **COMPLAINT FOR DECLARATORY
18 RELIEF**

19 Plaintiff ALPS Property & Casualty Insurance Company (ALPS) submits the following
20 Complaint for Declaratory Relief.

21
22 **I. INTRODUCTION**

23 1.1 This is an insurance coverage action seeking declaratory relief pursuant to 28
U.S.C §§ 2201 and 2202. ALPS seeks a determination that it does not owe a duty to defend or
indemnify Tim Billick and/or TBillick Law, PLLC (hereinafter collectively, “Billick”) for the
acts or omissions forming the basis ALPS Claim No. B2113065, Policy number ALPS 26540
(hereinafter, the “Underlying Claim.”)

II. PARTIES

2.1 Plaintiff ALPS Property & Casualty Insurance Company is a foreign insurer organized under the laws of the state of Montana with its principal place of business in the state of Montana.

2.2 Defendant Tim Billick is a citizen of the State of Washington, who resides in King County, Washington.

2.3 Defendant TBillick Law, PLLC is a Washington Professional Limited Liability Company with its principal place of business in King County, Washington. Tim Billick is the sole member of TBillick Law, PLLC.

2.4 Defendant Bank of England is a foreign bank corporation organized under the laws of the state of Arkansas with a principal place of business in England, Arkansas.

III. JURISDICTION AND VENUE

3.1 This court has jurisdiction over this claim pursuant to 28 U.S.C § 1332 as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and diversity amongst the parties is complete.

3.2 Venue is proper with this Court pursuant to 28 U.S.C. §1391 as this case involves a claim for insurance coverage stemming from the alleged losses that occurred in King County, Washington.

IV. FACTS

A. Background

4.1 This matter arises out of a claim under a policy of insurance issued by ALPS to Billick seeking coverage for claims asserted by the Bank of England involving alleged wire fraud.

4.2 Defendant Tim Billick is an attorney in Seattle, Washington.

1 4.3 In January 2021, Billick was retained by an entity purporting to be Martiro IT to
2 resolve a settlement agreement dispute allegedly involving Opticon, Inc., a company based in
3 Renton, Washington.

4 4.4 On April 1, 2021, Billick received \$529,950.08 into his IOLTA account via wire
5 transfer that he believed to have come from Opticon to fund the settlement in Martiro's favor.

6 4.5 On or around April 9, 2021, Billick transferred \$520,000 of the \$529,950.08 in
7 his IOLTA account to a foreign bank account pursuant to the wiring instructions from the entity
8 purporting to be Martiro.

9 4.6 On or around April 19, 2021, Billick received two additional wire transfers into
10 his IOLTA account, which Billick believed were from Opticon to further fund the settlement.

11 4.7 On or around April 23, 2021, Billick transferred \$435,000 to Martiro based on
12 the wire instructions previously provided by Martiro.

13 4.8 On or around April 27, 2021, Billick transferred \$745,000 to a foreign bank
14 account based on wiring instructions received from the entity purporting to be Martiro.

15 4.9 The individuals with whom Billick was communicating were not legitimate
16 representatives of Martiro or Opticon.

17 4.10 On or around May 10, 2021, Billick received a letter purportedly from Dennis
18 Lan of Lan & Associates, P.C. alleging that on April 1, 2021, Bank of England wired
19 \$529,950.08 to Billick's IOLTA account based on fraudulent wire instructions in a mortgage
20 payoff letter.

21 4.11 The May 10, 2021 Lan letter demanded that Billick return the full amount of the
22 fraudulently wired funds.

1 4.12 Billick advised Lan that he had already wired the funds to another account on
2 instructions from what he had believed to be a legitimate client.

3 **B. Billick's Claim and ALPS' Response Thereto**

4 4.13 On May 21, 2021, ALPS received tender from Billick seeking defense and
5 indemnity under the ALPS policy.

6 4.14 ALPS promptly acknowledged the May 21, 2021, letter and initiated a coverage
7 investigation.

8 4.15 On or about June 17, 2021, ALPS issued a letter to Billick advising that it agreed
9 to provide him with a defense of the actual or potential claims arising out of the wire fraud
10 allegations subject to an express reservation of rights.

11 **C. The ALPS Policy**

12 4.16 ALPS issued a professional liability policy to TBillick Law, PLLC, numbered
13 ALPS26540 (the "ALPS Policy"). The ALPS Policy incepted on August 10, 2020, with a
14 cancellation date of August 10, 2021.

15 4.17 The ALPS Policy carries a Limit of Liability in the amount of \$100,000 per claim,
16 with a \$300,000 aggregate.

17 4.18 Billick is listed as a Named Insured Attorney on the ALPS Policy.

18 4.19 The Insuring Agreement for the Coverage part in the ALPS Policy contains the
19 following language, in pertinent part:

20 **A. COVERAGE**

21 Subject to the **Limit of Liability**, exclusions, conditions and
22 other terms of this **Policy**, the **Company** agrees to pay on
behalf of the **Insured** all sums (in excess of the **Deductible**
23 amount) that the **Insured** becomes legally obligated to pay
as **Damages**, arising from or in connection with A **CLAIM**
FIRST MADE AGAINST THE **INSURED** AND FIRST

1 REPORTED TO THE **COMPANY** DURING THE
 2 **POLICY PERIOD**, provided that all of the following
 3 conditions are satisfied:

- 4 1. The **Claim** arises from a **Wrongful Act** that occurred
 on or after the **Retroactive Coverage Date** set forth
 in Item 2 of the **Declarations**;
- 5 2. At the **Effective Date** of this **Policy**, no **Insured**
 knew or reasonably should have known or foreseen
 that the **Wrongful Act** might be the basis of a **Claim**;
- 6 3. Notice of the **Claim** or the **Wrongful Act** was not
 given nor required to be given to any other insurer
 prior to the **Effective Date**; and
- 7 4. The **Claim** is not otherwise covered under any other
 insurance policy that the **Company** has issued to the
 8 **Named Insured**.

9 **B. DEFENSE AND CLAIM EXPENSES**

- 10 1. For any **Claim** covered under this **Policy**, the
 11 **Company** shall have the right and the duty to
 12 defend such **Claim** even if any or all of the
 13 allegations of the **Claim** are groundless, false or
 14 fraudulent, but shall have no obligation to appoint
 15 legal counsel to defend a **Claim** that is not the
 16 subject of a pending civil action, arbitration, or
 17 similar proceeding seeking the recovery of
 18 compensatory damages. The **Company** shall have
 19 the right to appoint legal counsel in the **Company's**
 20 sole discretion.
- 21 2. The **Company** shall pay **Claim Expenses** in
 22 accordance with the terms of this **Policy**. The
 23 **Company** shall not have a duty to defend or to pay
 such expenses as to any **Claim** not covered under this
Policy and shall have the right to seek reimbursement
from any **Insured**, who shall promptly provide such
reimbursement, for any amount paid by the
Company in defending any such non-covered
Claim, including any amount paid in defending a
non-covered **Claim** that is asserted together with one
or more covered **Claims**.

...

1 The right to reimbursement of **Claims Expenses** will
 2 only apply to the costs the **Company** has incurred
 3 after the **Company** notifies the **Insured** in writing
 4 that coverage might not exist under the Policy and
 5 that the **Company** is reserving the **Company's** right
 6 to terminate the defense or the payment of **Claims**
 7 **Expenses** and to seek reimbursement for **Claims**
 8 **Expenses**.

9 ALPS-LPL-BASIC (01-18)

10 4.20 The ALPS Policy contains the following definitions which are relevant to the
 11 above insuring agreement:

12 C. **Claim** means a demand for money or services including, but
 13 not necessarily limited to, the service of suit or institution of
 14 arbitration or alternative dispute resolution proceedings
 15 against the **Insured**.
 16 ...

17 D. **Claim Expenses** means:

18 1. Fees charged by any attorney(s) designated by the
 19 **Company** to defend a **Claim** or otherwise represent
 20 an **Insured**;
 21 2. All other fees, costs, and expenses resulting from the
 22 investigation, adjustment, defense, and appeal of a
 23 **Claim** (including a suit or proceeding arising in
 24 connection therewith), if incurred by the **Company**,
 25 or if incurred by the **Insured** with the prior written
 26 consent of the **Company**;
 27 3. Any supplementary payments incurred or
 28 reimbursed by the **Company** under Section 1.D.

29 **Claim Expenses** does *not* mean *nor* include:

30 4. Salaries or other compensation of regular employees
 31 or officials of the **Company** or the **Named Insured**.
 32 ...

33 E. **Computer Systems** means computers, information systems,
 34 servers, hardware, software, and associated input and output
 35 devices, data storage devices, networking equipment, back
 36 up facilities and any other associated or connected electronic

1 devices, including mobile devices.

2 H. **Damages** means any:

3 1. Monetary award by way of judgment or final
4 arbitration, or any settlement; and
5 2. Civil liability which may be imposed upon an
6 **Insured** under § 813(a) of the federal Fair Debt
Collection Practices Act (codified at 15 U.S.C. §
7 1692k(a)), as may hereafter be amended from time to
time.

8 **Damages** does *not* mean *nor* include any:

9 3. Punitive, multiple, or exemplary damages, fines,
10 sanctions, penalties or citations, including, without
11 limitation, any consequential or incidental damages,
12 attorney's fees or costs, or pre-judgment or post-
judgment interest resulting therefrom, regardless
against whom the same are levied or imposed and
regardless of whether the same were levied or
imposed in a separate matter or proceeding;

13 4. Awards deemed uninsurable by law;

14 5. Injunctive, declaratory, or other equitable relief, or
costs or fees incident thereto;

15 6. Restitution, reduction, disgorgement or set-off of any
fees, costs, consideration or expenses paid to or
charged by an Insured, or any other funds or property
of any person or entity presently or formerly held or
in any manner directly or indirectly controlled by an
Insured;

16 7. Injury or damage to, destruction of, loss of, or loss of
use of any funds or property; or

17 . . .

18 H. **Declarations** means the Policy Declarations attaching to this
19 **Policy** for the current **Policy Period** listed in Item 4 of the
20 Policy Declarations.

21 I. Deductible means the **Deductible** amount for “Each **Claim**”
22 stated in Item 6 of the **Declarations**. The **Deductible** is
23 described further in Section 4.A.

1
2 O. **Insured** means the **Named Insured** listed in item 1 of the
3 **Declarations** and each of the following, but solely for
4 **Claims** arising from **Professional Services** performed for
5 and on behalf of the Named Insured or a Predecessor Law
6 Firm:
7

8 1. An **Attorney** who is, at the time a **Claim** is first
9 made, or who was, at the **Effective Date** of the
10 **Policy**, a principal, partner, shareholder, member or
11 other owner or employee of the **Named Insured**, and
12 who is or was identified in Item 3 of the
13 **Declarations**;
14 ...

15 P. **Limit of Liability** means, with respect to **Claims** first made
16 and first reported during the **Policy Period**, the “**Each
17 Claim**” **Limit of Liability** and the “**Aggregate**” **Limit of
18 Liability**, as applicable and as listed in Item 5 of the
19 **Declarations**. The **Limit of Liability** with respect to **Claims**
20 first made and first reported during the **Policy Period**
21 includes the amount of any applicable **Deductible** and is
22 described further in Section 4.B.

23 **Limit of Liability** means, with respect to **Claims** first made
24 and first reported during any **Extended Reported Period**,
25 the applicable **Limit of Liability** further described in
26 Section 5.C.

27 W. **Professional Services** means services or activities
28 performed for and on behalf of the **Named Insured** or a
29 **Predecessor Law Firm** and rendered solely to other as;

30 1. As **Attorney** is an attorney-client relationship on
31 behalf of one or more clients applying the Attorney’s
32 specialized education, knowledge, skill, labor,
33 experience and/or training, including pro bono
34 services;
35 ...

36 **Professional Services** does not mean nor include
37 any:
38 ...

39 8. Obligations or services assumed by or
40 performed under any contract other than one to
41 provide **Professional Services**;

1 ...

2 z. **Wrongful Act** means an actual or alleged:

3 1. Act, error or omission in **Professional Services** that
4 were or should have been rendered by the **Insured**;

4 ...

5 ALPS-LPL-BASIC (01-18).

6 4.21 The ALPS Policy contains the following exclusion pertaining to dishonest,
7 criminal, intentionally wrongful or harmful acts:

8 SECTION 3 – EXCLUSIONS

9 **THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING**
10 **FROM OR IN CONNECTION WITH:**

11 A. Any dishonest, fraudulent, criminal, malicious, or
12 intentionally wrongful or harmful act, error or omission
13 committed by, at the direction of, or with the consent of an
14 **Insured**, or any **Personal Injury** arising from or in
15 connection with such conduct, subject to Section 6.A.
16 (“innocent insured coverage”);

17 ...

18 ALPS-LPL-BASIC (01-18)

19 4.22 The ALPS Policy also contains the following exclusion pertaining to conversion,
20 misappropriation, and wrongful disbursement:

21 SECTION 3 – EXCLUSIONS

22 **THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING**
23 **FROM OR IN CONNECTION WITH:**

24 ...

25 H. Any conversion, misappropriation, wrongful disbursement,
26 improper commingling or negligent supervision by any
27 person of client or trust account funds or property, or funds
28 or property of any other person, held or controlled at any
29 time by an Insured in any capacity or under any authority,
30 including any loss or reduction in value of such funds or
31 property;

1 ALPS-LPL- BASIC (01-18)

2 4.23 The ALPS Policy also contains the following exclusion pertaining to fee
3 disgorgement:

4 SECTION 3 – EXCLUSIONS

5 **THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING**
6 **FROM OR IN CONNECTION WITH:**

7 I. Any dispute over fees or costs, or any **Claim** that seeks,
8 whether directly or indirectly, the return, reimbursement or
9 disgorgement of fees, costs, or other funds or property held
10 or controlled at any time by an **Insured**;

11 ALPS-LPL-BASIC (01-18)

12 **V. THERE IS AN ACTUAL JUSTICIABLE CONTROVERSY**

13 5.1 The Coverage Part of the ALPS Policy provides coverage for all sums that the
14 “Insured” becomes legally obligated to pay as “Damages,” arising from or in connection with a
15 “Claim” first made against the “Insured” and first reported to the “Company” during the “Policy
16 Period.”

17 5.2 There is an actual and justiciable controversy as to whether the Coverage Part of
18 the ALPS Policy is triggered for the claims asserted against Billick in the Underlying Claim.

19 5.3 The ALPS Policy defines “Damages” to mean any monetary award by way of
20 judgment or final arbitration, or any settlement or any civil liability which may be imposed upon
21 the insured under section 813(a) of the Federal Fair Debt Collection Practices Act. “Damages”
22 does not include restitution, reduction, disgorgement, or set-off of any fees, costs, consideration,
23 or expenses paid to or charged by an Insured, or any other funds or property of any person or
entity presently or formerly held or in any manner directly or indirectly controlled by an Insured.

1 5.4 There is an actual and justiciable controversy as to whether the claims in the
2 Underlying Complaint qualify as “Damages” as that term is defined by the ALPS Policy.

3 5.5 The ALPS Policy defines “Wrongful Act” to mean an act, error, or omission in
4 Professional Services that were or should have been rendered by the Insured.

5 5.6 There is an actual and justiciable controversy whether the claims involve a
6 “Wrongful Act” as that term is defined.

7 5.7 The ALPS Policy defines “Professional Services” to mean services or activities
8 performed for and on behalf of the named insured or a predecessor law firm and rendered solely
9 to others as an attorney in an attorney-client relationship.

10 5.8 There is an actual and justiciable controversy whether Billick was performing
11 “Professional Services” as that term is defined.

12 5.9 The ALPS Policy specifically excludes coverage for any claim arising from a
13 dishonest, fraudulent, criminal, malicious, or intentionally wrongful act, error, or omission
14 committed by, at the direction of, or with the consent of an insured.

15 5.10 There is an actual and justiciable controversy as to whether claims by Billick arise
16 out of dishonest, fraudulent, criminal, or intentionally wrongful acts.

17 5.11 The ALPS Policy specifically excludes coverage for any claim arising from any
18 conversion, misappropriation, wrongful disbursement, improper commingling, or negligent
19 supervision by any person of client or trust account funds or property, or funds or property of
20 any other person, held or controlled at any time by an Insured in any capacity or under any
21 authority, including any loss or reduction in the value of such funds or property.

5.12 There is an actual justiciable controversy as to whether Billick converted, misappropriated, wrongfully disbursed, or negligently supervised funds or property when he wired funds to a fraudulent entity in a foreign bank.

5.13 The ALPS Policy specifically excludes coverage for any claim arising from any dispute over fees or costs, or any claim that seeks the return, or reimbursement of fees or costs, or other property held or controlled at any time by the insured.

5.14 There is an actual and justiciable controversy as to whether claims made by the Bank of England result from a dispute over fees and or property held or controlled by Billick.

VI. RESERVATIONS

6.1 ALPS reserves the right to amend this Complaint to include any other coverage defenses that may become evident during the course of discovery, or which are otherwise currently unknown or unknowable on ALPS' part.

6.2 ALPS further reserves the right to amend this Complaint to include such other coverage defenses that may arise due to future conduct of any parties or third parties hereto.

VII. CLAIM FOR DECLARATORY JUDGMENT

7.1 Pursuant to 28. U.S.C §§ 2201 and 2202, ALPS seeks a judicial declaration of its rights and duties under the ALPS Policy.

7.2 ALPS is entitled to a Declaratory Judgment in its favor, specifically including a judicial determination that it does not owe any defense or indemnity coverage obligations to Billick or TBillick Law PLLC for claims asserted against them in regard to the wire fraud claims that are the subject of the Underlying Claim.

VIII. REQUEST FOR RELIEF

WHEREFORE, ALPS, having specifically alleged the foregoing, now requests the following relief:

8.1 For a determination of the rights and obligations of the parties hereto under the ALPS Policy.

8.2 For a judicial declaration that ALPS does not owe any defense or indemnity obligations to Tim Billick or TBillick Law PLLC, for any of the claims asserted against them in the Underlying Claim.

8.3 For all interest as allowed by applicable law.

8.4 For attorney's fees and costs allowed by applicable statute and law.

8.5 For other and further relief as the Court deems just and equitable.

DATED this 9th day of July, 2021.

LETHER LAW GROUP

/s/ Thomas Lether

Thomas Lether, WSBA #18089

/s/ Eric J. Neal

Eric J. Neal, WSBA #31863
1848 Westlake Avenue N, Suite 100
Seattle, WA 98109

P: (206) 467-5444/F: (206) 467-5544

tether@letherlaw.com

eneal@letherlaw.com

Attorneys for ALP

Insurance Company